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## FINLAND'S OFFICIAL WATCHMEN \*

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To their own great loss, Americans are scantily acquainted with the friendly people and delightful scenery of Finland. Despite Finland's geographical and cultural remoteness, however, students of government in the United States have become increasingly curious about that small country's long experience with nonjudicial watchmen against governmental aberrations.<sup>1</sup> Knowledge of Finland's experience may assist others' searches for simplified safeguards against official mistakes and misdeeds.<sup>2</sup>

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<sup>1</sup> "Small country" is, of course, only a relative term. Finland's area is larger than that of New York, New Jersey, all the New England states, and Maryland in combination, or than that of Eire, Scotland, Wales, and England together. Almost a tenth of its surface is covered by lakes, however, and part of its territory is in the as yet unproductive Far North. The population totals only about four and a half million, of whom roughly half a million live in the largest city, Helsinki. The next two largest cities in the nation have populations of a bit less than 150,000.

<sup>2</sup> Finnish experience has not been much discussed in English language publications. The main papers are Kastari, *The Parliamentary Ombudsman; His Functions, Position, and Relation to the Chancellor of Justice in Finland*, 28 INT'L REV. OF ADMINISTRATIVE SCIENCE 391 (1962); Kastari, *The Chancellor of Justice and the Ombudsman*, in *THE OMBUDSMAN: CITIZEN'S DEFENDER* 83-113 (Rowat ed., 1965); Rowat, *Finland's Defenders of the Law: The Chancellor of Justice and the Parliamentary Ombudsman*, 4 CANADIAN PUBLIC ADMINISTRATION 361, 412 (1961). See also CHAPMAN, *THE PROFESSION OF GOVERNMENT* 245-59 (1959); Anderson, *The Scandinavian Ombudsman*, 12 AMERICAN-SCANDINAVIAN REV. 403 (1964). In 1965 the Ombudsman's office itself published an informative booklet entitled *The Position and Functions of the Finnish Parliamentary Ombudsman*. For general background material, see MERIKOSKI, *PRÉSIS DU DROIT PUBLIC DE LA FINLANDE* (1954).

## I. A PAGE OR TWO OF HISTORY

Finland, for six centuries a part of the realm of Sweden, was ceded to the Russian Empire in 1809. Accorded the special status of grand duchy within the empire, it continued to have its own laws, its own autonomous administration, and its own state church. The Czar, an autocratic ruler in Russia itself, was simply the Grand Duke of Finland and thus subject to constitutional restrictions as had been the King of Sweden previously.

Somewhat ironically, the people of Sweden wrought major changes in their constitution almost at the moment when Finland ceased being directly governed by it. The discarded and outmoded terms of the Swedish Constitutional Acts of 1772 and 1789 were nevertheless carried over into the new Grand Duchy of Finland. They provided the framework of government until more than a century later when Finland's national independence was granted by the Russian Bolsheviks.

One of the Swedish institutions that continued in the Grand Duchy was the office of Chancellor of Justice. In origin the Chancellor was a royal appointee, charged with the responsibility of overseeing the King's servants. In time he became the chief prosecutor, commanded by his royal master to ferret out faithless officials. While in Sweden the importance of this post declined after 1809,<sup>3</sup> it flourished in Finland with no change in powers or responsibilities despite acquiring the title of Procurator by which a similar office was known in Russia.

Unable to resist engulfment by physical force, Finns sought to keep their Russian overlords in place by insistently strict observance of legality in all governmental relationships. The basic laws to which such devoted attention was paid had not been particularly enlightened or well designed in the first place, nor had they been improved by age. But they did have the great virtue of being known quantities, not subject to change without notice by czarist fiat. Watchfulness against disregard of the old laws fostered what Jan-Magnus Jansson, a leading Finnish political scientist, recently characterized as a kind of antiquarian spirit among Finland's lawyers. Although this antiquarianism may not have opened the doors to the future, it did help to keep them closed against the loss of political autonomy.

During the decades immediately preceding World War I the Russian government exerted great pressures to end Finland's privileged position within the empire. A few Chancellors of Justice and local

<sup>3</sup> See Gellhorn, *The Swedish Ombudsman*, 75 YALE L.J. 1 (1965); cf. Rridhdm, *The Chancellor of Justice*, in *THE OMBUDSMAN: CITIZEN'S DEFENDER* 17 (Rowat ed. 1965).

judges withstood those pressures. They heroically obstructed the enforcement of "imperial legislation" they considered incompatible with the Grand Duchy's basic laws. The jurists' intractability proved to be perhaps the main impediment to easy realization of czarist plans. Pertinacious scrutinizing of legal questions became, indeed, almost a patriotic obligation in the troubled days when encroachment upon the laws might have been the prelude to ethnic subjugation. Legal technicalities often frustrated, though they could never entirely block, the mighty and increasingly hostile government of the Czar.

That period left its stamp on now independent Finland. Legal precision, perhaps at first merely a tactic, has become a firm national policy, an ingrained habit, almost an obsession for whose perpetuation Finland's official watchmen are responsible.

Finland's independence did not alter the position of the Chancellor of Justice. The new government simply restored the ancient title and changed the personnel.<sup>4</sup> When a constitution was later adopted in 1919, it not only preserved the Chancellor's office substantially as it had been, but also created the parallel office of Parliamentary Ombudsman, to perform much the same work and with many of the same powers. History and tradition had linked the Chancellor with the Government, that is, with the executive branch. Henceforth a separate guardian against executive misdeeds was to be at the legislature's disposal.

## II. CHOOSING THE WATCHMEN

*Manner of appointment.* The President alone appoints the Chancellor, "who must possess a mastery of the Law."<sup>5</sup> He serves until retirement unless the President removes him sooner for the good of the nation, an eventuality that has not yet arisen. The Chancellor himself can be prosecuted if he exercises his functions "in a manner contrary to law."<sup>6</sup>

Parliament alone chooses the Ombudsman, who is required only to be "a person distinguished in law."<sup>7</sup> He is elected by simple majority vote to serve for four years. During that term he is irremovable; moreover, no provision has been made for prosecuting him were he to misuse his office. When his four year term ends, Parliament may shunt him aside, as has occurred twice since World War II.

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<sup>4</sup> The first post-Russian appointee travelled to his job all the way from Siberia, where he had been exiled some years previously for resisting the authority of a Russian incumbent.

<sup>5</sup> FINLAND CONST. art. 37.

<sup>6</sup> FINLAND CONST. art. 47.

<sup>7</sup> FINLAND CONST. art. 49.

*The watchmen's powers.* The Chancellor "must see that authorities and officials comply with the law and perform their duties so that no person shall suffer injury to his rights."<sup>8</sup> The Ombudsman, conformably with Parliament's instructions, "shall supervise the observance of the laws in the proceedings of courts and other authorities."<sup>9</sup> The Chancellor "shall have the right to assist at the sessions of the Council of State [that is to say, the Cabinet] and those of all tribunals and public departments, and he shall have access to the minutes of the Council of State and its Ministries, of the tribunals and other public authorities."<sup>10</sup> The Ombudsman "shall have the same right as the Chancellor of Justice to assist at the sessions of the Council of State and of tribunals and other public departments, to have access to the minutes of the Council of State, and its Ministries, of the tribunals and other authorities."<sup>11</sup> The Chancellor and the Ombudsman receive the same high salary, equal to that of the presidents of the Supreme Court and the Supreme Administrative Court. If the President were to decide that a member of the Cabinet should be tried before the Court of Impeachment, the Chancellor would serve as prosecutor; if the Parliament were to make the same decision, the Ombudsman would carry out the prosecution. If the President or a member of the Supreme Court or the Supreme Administrative Court were to be impeached, either the Chancellor or the Ombudsman could prosecute.

This careful matching of Tweedledum with Tweedledee does finally come to an end, however. The Chancellor is declared to be the "Supreme Public Prosecutor" with responsibility for supervising all prosecutors through the Republic.<sup>12</sup> On the other hand, the Ombudsman is instructed to prosecute an impeached Chancellor,<sup>13</sup> while the Chancellor has no similarly explicit authority to proceed against the Ombudsman.

*The watchmen's prestige.* Despite the close resemblances just noted, the Chancellor's prestige has undoubtedly exceeded the Ombudsman's. His office is the older and more glamorous, for the Ombudsman never enjoyed the status of popular hero as the Chancellor occasionally did in Russian times. Once appointed, the Chancellor serves continuously despite changes in the country's political complexion. Superficially, therefore, he seems less tainted by partisanship than is the Ombudsman, whom a vociferously partisan assemblage

<sup>8</sup> FINLAND CONST. art. 46.

<sup>9</sup> FINLAND CONST. art. 49.

<sup>10</sup> FINLAND CONST. art. 46.

<sup>11</sup> FINLAND CONST. art. 49.

<sup>12</sup> FINLAND CONST. art. 46.

<sup>13</sup> PARLIAMENTARY DIRECTIVES § 4.

elects quadrennially.<sup>14</sup> As a newcomer during the early days of the Finnish republic, the Ombudsman modestly remained inconspicuous and, consequently, was largely overlooked by a public already accustomed to turn to the Chancellor for protection. Though entitled to attend Cabinet meetings, the Ombudsman refrained from doing so, while the Chancellor rather ostentatiously kept close watch over the highest governmental circles. Generally the Chancellor has come from the Supreme Administrative Court or the Supreme Court and sometimes has returned to his former tribunal to be its president. The Ombudsman, by contrast, has typically been drawn from a slightly lower level of professional attainment, since the short term of his office makes it unattractive to professors, judges of the highest rank, and similarly secure persons. On several occasions the then incumbent Ombudsman has welcomed appointment to the Supreme Administrative Court. This has been regarded as a promotion because, though the Court's members have a smaller income, their tenure is assured. One unusually successful Ombudsman resigned in order to accept a professorship of law, but most have had to be content with lesser distinctions when leaving that post.

The ranking of the two offices may possibly change. The Chancellor seems less venerated today than in the past. His close ties with the Government may taint his independence, or at least be thought to do so. Moreover, his role as the Government's legal counsel may close his mind to questions that may later arise concerning the validity of governmental actions. A former Chancellor, remarking that no ministry had ever rejected his advice, added candidly that his advice might not have been relied on so completely if his opinions had vacillated. Realization of that fact, he acknowledged, had handicapped him somewhat when a citizen later asked him to deal with what the citizen regarded as an illegal act. "If the act had been done in accord with advice I had given, I was not eager to find anything wrong with it afterward," he admitted. The Ombudsman is not similarly inhibited, simply because governmental proposals are not discussed with him at an early stage as they are with the Chancellor.

Whatever may be the popularity rating of their respective offices now or in the future, the incumbent Chancellor and Ombudsman are

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<sup>14</sup> Usually two names are put forward to be voted upon in Parliament. No all-party consensus is sought before the balloting begins. The vote is taken in closed session, but, according to informed observers, the requisite majority is quickly obtained because voting proceeds on party lines, though party activists have been shunned as nominees.

In the beginning, the election of the Ombudsman was an annual affair. The term of office was lengthened first to three years and, more recently, to four in an effort to enhance the efficiency of the office and deemphasize the Ombudsman's dependence on the electors' favor.

considerably respected and concededly nonpolitical. The Chancellor had earned the high regard of lawyers during his fifteen years as a member of the Supreme Court. The Ombudsman, after substantial judicial experience, had headed the law preparation division of the Ministry of Justice and, on a part time basis, had been secretary of the Constitutional Committee of Parliament. Members of Parliament, favorably impressed by his work, sought him out to be Ombudsman when a vacancy occurred. He is well liked within the legal profession, one of whose chief spokesmen described him as "an able general specialist."

### III. RELATIONSHIP TO THE EXECUTIVE

*Executive organization.* Defining Finland's governmental system in a few words is not easy. Most functions of administration are lodged in ministries headed by Cabinet Ministers, individually and collectively answerable to Parliament. At the same time administrative tasks are performed by a number of central offices and boards that are outside the official hierarchy of the ministries, though ultimately answerable to the Cabinet or to a Minister and, through that channel, to Parliament. Finally, the nation's President is elected for a fixed term and his continuance in office is therefore not dependent upon parliamentary support. His position has gained in stature over the years, at least partly because cabinets have been short lived, no party having won an absolute majority of the seats since 1917.<sup>15</sup> He has power under the Constitution to issue decrees not inconsistent with acts of Parliament, and he is directed to "supervise the administration of the State."<sup>16</sup> In exercising his powers the President must act in consultation with the Cabinet, but is not legally bound by its views.

*Preauditing questions of legality.* All proposals to be acted upon by the Cabinet, whether upon the initiative of the President or of a Minister, are submitted to the Chancellor and to the Ombudsman for their prior scrutiny. The Ombudsman would like to take seriously his duty and opportunity to consider the legality of proposed decrees, regulations, and legislative suggestions; but, to be blunt, in this respect he is not taken seriously by others. He receives the agenda only forty-eight hours in advance of the meeting at which decisions are to be made, thus having scant opportunity for thorough study of the tens and sometimes hundreds of items on the agenda.

The Chancellor, on the other hand, really does play an important part at this stage. Although he receives the official agenda just as

<sup>15</sup> In the first forty-five years after independence was gained in 1917, Finland had forty-seven cabinets. Jansson, *A Century of Finnish Government*, in INTRODUCTION TO FINLAND 42, 54 (1963).

<sup>16</sup> FINLAND CONST. art. 32.

tardily as the Ombudsman does, ministerial officials who are responsible for preparing papers for Cabinet consideration—or, often, only for their own Minister's decision—consult him well in advance concerning troublesome questions. His opinions and suggestions have tremendous weight. Proposals about whose legality he has expressed doubt are simply withdrawn for further study. He has no voice in shaping policy, but of course, questions of law cannot always be neatly separated from questions of policy. When the Chancellor does unequivocally declare that the law stands in the path of a proposal, even the President must pay heed to his counsel.<sup>17</sup> While the Ombudsman has not attended a meeting of the Council of State since 1923, the Chancellor or his Deputy is present at every session, not as a member of the Cabinet with the right to vote, but as a legal censor who sits slightly apart and who expresses his disapproval of the conclusions reached by the Cabinet or the President if he regards them as indisputably unconstitutional.

Legal flexibility has been achieved by the ingenious Finnish device of constitutional "exceptions." A legislative proposal the Chancellor regards as inconsistent with the Constitution need not be abandoned. Instead, it can be submitted to the Parliament for adoption by a special vote, in the same manner as an amendment to the Constitution. So far as is known, the Cabinet has never ignored the Chancellor's advice to proceed by way of an "exception," which has the effect (if Parliament acquiesces) of bypassing the Constitution on an *ad hoc* basis without permanently altering it.<sup>18</sup> Approximately six hundred laws have been enacted by the special "constitutional procedure" since 1919; some of these have involved such basically important matters

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<sup>17</sup> FINLAND CONST. art. 45 provides: "If it should happen that a decision taken by the President and to be executed by the Council of State is found to be contrary to law, the Council, after hearing the opinion of the Chancellor of Justice, shall request the President to withdraw or modify his decision, and, if the President nevertheless adheres to his decision, the Council must declare that the decision cannot be enforced."

FINLAND CONST. art. 47 states in part:

If in the exercise of their functions the Council of State or any of its members act in a manner contrary to law, it is incumbent upon the Chancellor of Justice to make representation upon the subject and at the same time indicate in what respect the act is illegal. If no heed is taken of such representation, the Chancellor of Justice shall have his opinion recorded in the minutes of the Council of State, and he shall also have the right to advise the President of the matter. If the illegality is of such a nature as to involve a prosecution against a member of the Council of State . . . and if the President orders such a prosecution to take place, it shall be carried out by the Chancellor of Justice. If the President finds that there is no ground for an indictment, the Chancellor of Justice shall be free to report on the case to Parliament. . . .

<sup>18</sup> Discussion of "the peculiar Finnish system" appears in Kastari, *Guarantees of Fundamental Rights and the Constitutional Principle*, in *JAHRBUCH DES ÖFFENTLICHEN RECHTS DER GEGENWART* 438, 450-52 (1964); Kastari, *The Constitutional Protection of Fundamental Rights in Finland*, 34 *TUL. L. REV.* 695, 697 (1960).

as the mode of presidential election during the years of World War II and the legislative delegation of broad powers in times of crises.<sup>19</sup>

*The watchmen's independence.* Frequent and intimate association between the Chancellor, and the President, the Ministers, and ministerial staffs leads some Finnish lawyers to doubt the Chancellor's detachment. Expressing a sentiment many others share, a leading constitutional authority has written that the Chancellor serves the government of the day "in much the same sense as does a so-called crown jurist, who should be wholly objective, but who is frequently partisan in his representations."<sup>20</sup> The Chancellor's presence at Cabinet meetings, another prominent scholar recently remarked, "covers the Government with a cloak of what looks like legality—and of course that makes it very difficult for him to admit later that he was looking out of the window when legally dubious matters were being dealt with. Instead he defends himself by defending the Government."

Even so, direct clashes between the Chancellor and leading political figures have occurred. Some years ago, for example, a Chancellor persuaded the President that a Minister should be prosecuted because he had improperly prepared a Cabinet working paper. More recently a Chancellor prosecuted the directors of a government insurance fund for authorizing low cost loans to build apartment houses in which some of their friends (including fellow officials) hoped to reside. Among the directors were the Prime Minister, Cabinet members, and the President of the Supreme Administrative Court. Some, but not all, of the defendants were fined. The Prime Minister resigned. When fully examined in court, however, the affair seemed far less scandalous and perhaps more "political" than at first had been supposed.

The very fact that the prosecution was initiated may show that the Chancellor is indeed as independent as he is supposed to be. On the other hand, the Chancellor who launched that prosecution was turned out of office afterward upon reaching retirement age, although a permissible extension of three years had been granted his predecessors. When asked whether the insurance fund case had had any permanent consequences, the former Chancellor glumly replied not long ago: "Yes. I lost my job." If his appraisal is correct, future chancellors may be unenthusiastic about demonstrating their detachment.

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<sup>19</sup> The need for constitutional procedure is finally determined not by the Chancellor, but by the Constitutional Committee of Parliament, which is said to be quicker than the Chancellor to discern possible incompatibility between a Cabinet proposal and the Constitution. The Constitutional Committee, the bulk of whose members are not lawyers, utilizes the services of a board of consultants, highly respected jurists whose advice has been closely followed.

<sup>20</sup> Kastari, *The Parliamentary Ombudsman: His Functions, Position, and Relation to the Chancellor of Justice in Finland*, 28 INT'L REV. OF ADMINISTRATIVE SCIENCE 391, 394 (1962).



The Ombudsman, who is less closely linked with the executive branch, is presumably uninhibited in dealing with transgressors in high places, though he must have Parliament's consent before he can prosecute a Minister personally. In 1952 the Ombudsman, acting on his own initiative, went before Parliament (where he has the privilege of the floor) to seek the indictment of two Cabinet members and two former Ministers for imprudent use of public funds to the advantage of a private business enterprise with which one of them was connected. After lengthy parliamentary consideration, prosecution was authorized. The Cabinet members immediately resigned their offices. The Ombudsman himself served as prosecutor. Two of the four defendants were convicted. The prominence of those whom the Ombudsman had denounced underscored his unconcern for governmental sensibilities.

Soon afterward, a high ranking official of the Defense Ministry, who had his minister's support, was dismissed and deprived of pension rights after prosecution by the Ombudsman. Only a few years ago the Ombudsman caused a flurry when he gave a sharp "reminder" to the Minister of Justice about his legal duties. Since the Minister happened to have been the Ombudsman at an earlier period in his own career, he received the rebuke with rather marked ill grace.

Episodes like these do not prove that the Ombudsman is totally immune from pressures to which the Chancellor is exposed. They do perhaps suggest, however, that detachment from the executive branch frees the Ombudsman from the personal pangs and embarrassments the Chancellor might feel when attacking an old colleague.

#### IV. RELATIONSHIP TO THE COURTS

The watchmen's duty to safeguard legality is all inclusive. Both the Ombudsman and the Chancellor are required to concern themselves with judges as well as with other law administrators. Since, however, "judicial independence" is valued in Finland<sup>21</sup> as elsewhere, a nice line must be drawn between supervision, which is regarded as a Good Thing, and interference, which is of course Bad.

*Judicial organization.* Seventy-three rural district courts and thirty-five city courts, manned by two hundred professional judges, are responsible for the trial of civil and criminal cases. Four courts of appeal, with a total of seventy-five judges, hear appeals. The Supreme Court, with a president and no fewer than twenty-one members who

<sup>21</sup> FINLAND CONST. art. 2 provides in part that "The judicial power shall be exercised by independent tribunals . . . ." FINLAND CONST. art. 91 forbids ousting a judge "except by a lawful trial and judgment" and also forbids transferring him to another post without his consent, except as part of a general reorganization of the judiciary.

sit in three sections, has final appellate jurisdiction in civil and criminal matters.

The Supreme Administrative Court—a president and no fewer than thirteen nor more than twenty-five members—has comprehensive power to decide administrative appeals, not only from the decisions of inferior administrative authorities and from the “provincial courts” to which later reference will be made<sup>22</sup> but also from the decisions of the highest authorities including the Council of State.<sup>23</sup>

In addition, professional judges are part of the personnel attached to specialized tribunals such as military courts, water courts, and a social insurance court. Steps have been successfully taken to reduce the risk of political favoritism in selecting the judiciary.<sup>24</sup> The professional judiciary is generally respected.

Access to Finland’s well-manned courts is neither difficult nor costly. Filing fees are very low. A litigant need not engage an advocate (a status that had been attained in 1964 by only 330 lawyers throughout the entire country<sup>25</sup>) nor one of the two or three hundred practitioners of lesser rank.<sup>26</sup> Instead he may appear in his own

<sup>22</sup> See pp. 344-45 *infra*.

<sup>23</sup> See Merikoski, *Legality in Administrative Law*, 4 SCANDINAVIAN STUDIES IN LAW 127, 138-40 (1960); Uotila, *Improving Public Administration in Finland*, 27 INT’L REV. OF ADMINISTRATIVE SCIENCE 1 (1961). Decisions of the Cabinet and ministries are appealable only on legal grounds, while appeals against the exercise of discretion (as well as on legal grounds) can be considered when other administrative authorities are involved. Professor Merikoski’s study shows that recognition of the Cabinet’s discretionary powers does not greatly limit the court. From 1932 to 1955 the Supreme Administrative Court received 106,123 appeals, of which it transferred only 726 to the Cabinet because they involved the exercise of discretion. Of these, more than half (389) had to do with peddlers’ licenses. The use of motor vehicles provided the next largest number. Others had to do with such epochal matters as appointments of doormen at cafes and permission to take crayfish from public waters for breeding purposes. Merikoski, *supra* at 142.

<sup>24</sup> The President of the Republic has been authorized by article 87 of the Constitution to appoint the Presidents of the Supreme Court and the Supreme Administrative Court. He also appoints the members of the Supreme Court and the presidents of the courts of appeal, but only upon the recommendation of the Supreme Court. Similarly, the Supreme Administrative Court recommends the persons whom the President appoints to sit in that body. The Supreme Court recommends the appointees to the courts of appeal, and it directly appoints many of the lower court judges and the chairmen of other courts. City court members are elected by the appropriate municipal council, usually on party lines, but sometimes with considerable reliance on the judiciary’s advice.

<sup>25</sup> THE UNION OF FINNISH LAWYERS, LAW AND LAWYERS IN FINLAND 5 (1964).

<sup>26</sup> THE UNION OF FINNISH LAWYERS, THE FUTURE SUPPLY OF LAWYERS IN FINLAND AND THE DEMAND FOR THEIR SERVICES 17-18 (1960), shows the following occupational distribution of the 3,670 Finnish lawyers who were professionally active in 1957:

Private law practice	561
Judiciary	636
National administration	1252
Local administration	229
Commerce and industry	736
Organizational activity	146
Law teaching	51
Other	59

behalf or through any representative he may choose. In matters related to public administration, personal hearings before the courts are a rarity since most issues are determined on the basis of the relevant papers without the necessity of briefs or arguments on behalf of the appellant.

In circumstances so favorable to affected persons' use of appellate judicial processes whenever dissatisfied, one might suppose that the judges could cure their own aberrations without external policing. Finland apparently believes otherwise. The Chancellor devotes much attention to the judges. For many years the Ombudsman, though equally empowered to delve into the functioning of the judiciary, seemingly regarded that field as already occupied. Since 1962, however, the Ombudsman has been taking a noticeably keener interest in the courts.

*Prosecuting the judges.* A Special Prosecutor who is appointed by the Supreme Court with the Chancellor's concurrence is attached to each of the four courts of appeal. His task is to proceed against lower court judges in suitable instances.<sup>27</sup>

Prosecutions of judges are not at all rare. Sixty-one prosecutions were begun against judges in 1960; in 1961, the figure was eighty-nine; in 1962, ninety; in 1963, one hundred and forty-eight; in 1964, one hundred and eighteen. Few of these were for serious offenses. Most of them fell within section 40.21 of the Finnish Penal Code: "An official who commits an error in office through carelessness, omission, imprudence, lack of understanding, or lack of skill shall be sentenced to a fine or suspension from duty unless the error be so minor that a reminder be deemed the appropriate sanction; if the circumstances warrant, he may be removed from office."

A substantial portion of the prosecutions derives from routine review of periodic reports showing sentences imposed and fines collected in each court. The Deputy Chancellor and his subordinates examine these to detect errors, whether or not appeals have been taken.<sup>28</sup> A judicial blunder sufficient to cause an eyebrow to lift brings prosecution of the erring judge.<sup>29</sup>

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<sup>27</sup> He also conducts prosecutions of higher level nonjudicial administrators when directed to do so by either the Chancellor or the Ombudsman.

<sup>28</sup> Both the Chancellor and the Ombudsman are authorized by law to attend the executive sessions of any and all courts. Neither one of them ever exercises this power, however.

<sup>29</sup> In 1960, 44 of the 61 prosecutions of judges were initiated upon the basis of this routinized examination by the Chancellor's staff of lists the judges were required to file. The comparable numbers in later years were as follows:

1961	23: 89
1962	19: 90
1963	47:148
1964	20:118

Most other prosecutions are based upon errors discerned by a court of appeal (or, more rarely, the Supreme Court) when reviewing a lower court's judgment. The Special Prosecutor, who also reviews the "prisoner lists" and "fine lists" supplied by the trial judges, commences a number of cases on his own motion. Very rarely a more serious episode comes to light, usually through information communicated to the Chancellor; a few years ago, for example, a judge was prosecuted and dismissed because he had exacted improper fees for judicial proceedings and another judge lost his job when insobriety affected his courtroom demeanor.

The very frequency of prosecutions may reduce their significance. One of the court of appeal prosecutors, himself a former judge, commented flatly: "A conviction does not affect a judge's career. Of course if he committed an offense knowingly, that would be another matter. And I suppose a judge would have a dim future if he were frequently prosecuted, because this would suggest habitually sloppy work or mental laziness. Prosecutions do, however, keep judges on their mark because a mistake may hit them in the pocketbook."<sup>30</sup>

Some judges, however, appraise prosecutions more harshly than did the prosecutor. A distinguished jurist recently recalled with some asperity that he himself, when a very young judge, had been prosecuted for imposing too severe a fine upon a petty lawbreaker. "I paid back the extra amount as soon as the mistake was called to my attention," he said, "but nobody could pay back to me the shame of being prosecuted." Another judge, highly regarded in legal circles, remarked that judges were under scrutiny too constantly, although he fully favored having some checks upon his own and his colleagues' work. "Our trouble," he declared, "is that everybody is supervising us. The country would be better off if some one body, whether it be the court of appeal or its prosecutor or the Chancellor or the Ombudsman, had the entire responsibility. And some way should be found for detecting and correcting mistakes without this constant prosecuting. If prosecution were reserved for big things, it would be a real whip instead of a damned irritation."

In general, however, the present system seems to be accepted resignedly. The newspapers pay no attention at all to the routine prosecution of judges. A leading law professor, interviewed in the company of an appellate judge and a practicing lawyer, asserted with their seeming accord that a judge is unhurt by a prosecution, which is

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<sup>30</sup> As in other Scandinavian countries, Finland imposes fines on a sliding scale related to income; a fine means losing a stated proportion of a certain number of days' wages or salary. Instead of being subjected to a fine after being convicted, a judge may simply be given a "reminder", which is in effect a censure without financial consequences, though of course it remains as a blot on the judge's record.

"more in the nature of a nuisance than a real embarrassment." Other judges with whom the matter was discussed expressed similar views. They insist, too, that they ignore the Chancellor's opinions unless based upon explicit statutory provisions of acknowledged relevance. Supreme Court judges recount with satisfaction their rebuff to the Chancellor a few years ago when he criticized them for increasing the severity of a sentence imposed by a lower court without affording the defendant an opportunity to be heard. "We had the power to do so, and it was none of his business if we chose to exercise it," a member of the Supreme Court recently declared with strong feeling. "If the Chancellor thought we were doing wrong, let him try to prosecute us. He didn't dare do that. So he should have kept his thoughts to himself, and that is what we told him."<sup>31</sup>

Analysis of the list of those prosecuted during a recent three year period shows that most of the judicial defendants were inexperienced young men presiding over rural assizes. Some, indeed, were serving their initial apprenticeship immediately after completing law studies. Prosecution is a rather harsh means of supervising the work of novices and of providing inservice training. It may also be inefficient, for knowledge that a punishment has been imposed is not formally communicated to other judges, who may therefore fail to learn of their colleague's sad experience unless they hear about it from gossips. The present system, as traditionally administered by the Chancellor, puts a high premium on attention to detail in recording the sentencing of penal offenders, but virtually overlooks the rest of judicial work. No attention at all seems to be paid to the administration of civil justice, save as the appellate courts may deal with erroneous judgments from which an appeal has been taken.<sup>32</sup>

Beyond argument, a judge should never impose fines and jail terms that exceed the limits provided by law, and of course a court's records should be up to date and accurate. These are not the entirety of good judging, however. The Chancellor's fixation on those phases of judicial work may have nurtured legality in a narrow sense, but it has also been deadening in a way. Great judging requires soaring spirit far more than it requires devotion to the clerical detail which now fills so large a part of a Finnish judge's life.<sup>33</sup>

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<sup>31</sup> In this instance, it is only fair to add, the Chancellor had the last word. In 1963 Parliament amended the law to require the hearing the Chancellor had recommended.

<sup>32</sup> The court of appeal's special prosecutor periodically "inspects" trial courts, but all agree that, until now, these inspections have concerned themselves almost exclusively with fiscal matters, notably the accounting of proceeds of sales of tax stamps that must be affixed to various formal documents. This is but another symptom of the somewhat mechanistic approach taken to "supervision" of judges' work.

<sup>33</sup> Conversation with judges in small cities has produced this composite picture of a trial judge's work week: He sits in court to hear cases for one day, from ten

*Reopening closed cases.* Both the Ombudsman and the Chancellor have a second major activity in relation to the judiciary. When a judgment has become final and no longer appealable because time limitations have been exceeded, either of these two officers may request the Supreme Court or the Supreme Administrative Court (as the case may be) to annul the prior decision and to reconsider the matter. The request may be based on newly acquired evidence or on equitable considerations. These cases are to be differentiated from the far more numerous interventions in matters still open to the conventional processes of review or appeal.

The Chancellor filed an average of 102 petitions to annul and reconsider during the five years 1960-1964, inclusive; ninety-five percent of his requests were found to be meritorious. The Ombudsman's similar requests were far less numerous, and somewhat less well received by the two supreme courts.

In these cases the Chancellor and the Ombudsman function as protagonists of legality rather than of the affected parties, for they may act quite without reference to the parties' own wishes.<sup>34</sup> The Ombudsman's cases pertain to official or judicial omissions or maladroitness that have produced still correctible injustice.<sup>35</sup> In matters of these kinds, however, the Ombudsman and the Chancellor may be said to work as investigators for the courts, rather than as investigators of the courts. Petitions which in other countries might be addressed directly to judges are usually, in Finland, first sifted by these high non-

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until five. He spends the next day and perhaps a portion of the following day preparing "protocols," or records of the matters heard. He devotes two days to compiling lists and reports of all kinds. In most places he is inadequately assisted by clerical staff or typists, and in some places by none at all. As one judge of fifteen years' experience observed, "It's a very dull job." And as a youthful assistant added: "The only thing I am sure of learning here is how to type."

<sup>34</sup> In 1958, for example, the Chancellor successfully petitioned for cancellation of a final divorce decree, obtained by the parties' collusion. The wife of a high military official had committed an embezzlement and was about to be exposed. To avoid endangering the husband's social standing, the couple falsely testified that they had been separated for more than two years and that cause for divorce existed. The Chancellor, as the nation's chief prosecutor, prosecuted the couple for perjury and, as guardian of legality, asked the Supreme Court to annul the decree of divorce.

<sup>35</sup> Examples from the Ombudsman's 1963 report: (1) A court imposed a fine on Y.E.K. for disobeying a summons to stand trial. On the date set for trial Y.E.K. was in detention elsewhere. His request to be transported to court had been denied by his jailer, who had been unable to confirm the prisoner's statement that he had been summoned. On the Ombudsman's request, the Supreme Court reopened Y.E.K.'s case and set aside the fine previously imposed. (2) A.H. was convicted of a crime, and was sentenced to pay a fine and damages. On appeal, the judgment was affirmed. Subsequently, the Ombudsman became persuaded that A.H. had been mentally irresponsible when the criminal acts had been committed. The Supreme Court agreed, and the judgment against A.H. was set aside. From the 1962 report: A.D., held in prison following his conviction, requested that the minutes of his trial be sent to him there so that he could appeal. The papers reached the prison on the day after A.D. had been released from detention. Instead of being forwarded to A.D., they were returned to the court. Before A.D. had obtained the minutes, the time to appeal had expired. At the Ombudsman's request, the time for taking an appeal was extended.

judicial officials. Petitions found meritorious are passed along to one of the appropriate supreme tribunals, which retains full power to decide what, if anything, should next be done.

#### V. RELATIONSHIP TO NONJUDICIAL ADMINISTRATION

*The watchmen's overlapping duties.* The Chancellor and the Ombudsman share the duty and the power to oversee all branches of governmental administration, at every level from the lowliest clerk of a rural commune to the loftiest military officer or central bureau chief. In order to balance workloads somewhat, Parliament has made the Ombudsman primarily responsible for safeguarding legality in the military services and in places of detention. The Chancellor, while still capable of dealing with complaints about those matters, in fact passes them along to the Ombudsman. Otherwise, the two watchmen have an overlapping duty to enforce official compliance with law.<sup>36</sup>

Despite the broad opportunity thus presented for conflict between these high offices, no friction seems to have occurred. Past and present office holders have stated that neither of the officials will deal with a complaint already under study by the other. While they could act successively upon the same matter and have occasionally done so wittingly or unwittingly, they have so rarely reached contrary conclusions that specific examples of discord could not be recalled during interviews in 1964. The harmony of their opinions and actions is seemingly spontaneous; the Chancellor and the Ombudsman do not consult one another regularly, though conversations occurred at one time between the then office holders who happened to be friends of long standing. Each ordinarily goes his separate way without informing the other. Good judgment or good luck has thus far prevented any collisions.<sup>37</sup>

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<sup>36</sup> The Chancellor has the responsibility, unshared by the Ombudsman, of being Supreme Public Prosecutor; in that capacity he supervises all public prosecutors throughout the land, other than the Ombudsman himself (so far as that official may be regarded as a prosecutor). Periodic reports are submitted to the Chancellor, showing in detail the actions taken in each prosecutor's office. These sometimes reveal mistakes which lead to a reprimand or a prosecution of a prosecutor. Prosecutors turn to the Chancellor for advice when in doubt whether a prosecutable offense has been made out by the evidence at hand. Either the Chancellor or the Ombudsman can order that a prosecution be initiated. Interestingly, however, neither can override a prosecutor's decision to prosecute; the prosecutor's belief about where his duty lies must be given full play, though the prosecutor may later suffer if his belief be regarded by the Chancellor as too glaringly ill founded. Moreover, the Chancellor has a so-called "absolute power of devolution," which means that he can himself supplant a prosecutor in a pending case and can assume personal responsibility for it. By exercising the power of devolution, the Chancellor could conceivably take over a prosecution of which he disapproved, and could then proceed to drop it.

<sup>37</sup> In its 1920 instructions to the Ombudsman (still in force today), Parliament told him that he was not to "interfere with the activities of the Chancellor." No similar words were addressed to the Chancellor concerning his "interfering" with the Ombudsman, but the absence of such an instruction has made no discernible difference in the officers' relationships.

In respect of public administration in general, both the Chancellor and the Ombudsman may investigate on the basis of specific complaints, upon their own initiative, or through personal inspections of institutions or offices. If they detect improprieties they may admonish, prosecute, or seek disciplinary measures as circumstances may suggest.

## VI. COMPLAINTS

*Sources and volume of cases.* While in theory the Ombudsman is "the people's man," the public at large seems to prefer dealing with the Chancellor.

In terms of numbers alone, the Ombudsman is the leader. In 1963, for example, the Ombudsman received 1,029 complaints, as against only 479 complaints addressed to the Chancellor (who referred seventy-three of these to the Ombudsman because they dealt with the military services or places of detention); in 1962 the respective figures were 753 and 598 (of which 105 were transferred to the Ombudsman).

These gross figures are, however, somewhat misleading for two reasons. First, in each of the years about seventy additional cases went to the Chancellor (but none to the Ombudsman) from other organs of government which had learned of seeming delinquencies through complaints by the public or through their own observation. Second, and more significant in the present context, the Ombudsman drew most of his complaints from a very small segment of the entire population, namely, prisoners in various places of detention. Persons interviewed in 1964 insistently repeated that the Ombudsman has chiefly been of use to those held in penal institutions. Among those who expressed this view were spokesmen for business groups, local governments, welfare officers, lawyers, trade unions, and civil servants. Even patients in mental institutions, who are eager "clients" of ombudsmen in other countries, infrequently complain to the Ombudsman in Finland. Officials of the Medical Board remarked simply: "The Ombudsman is not well known to the people at large. Our patients," they added with just a touch of pride, "complain to President Kekkonen himself."

The experience of the large Riihimäki penitentiary, in which only first offenders are confined, somewhat confirms the opinion that the general public is little aware of the Ombudsman. Riihimäki inmates, fresh from civilian life as it were, rarely write the Ombudsman though free to do so without prison censorship. But a prison official observed that "the volume of complaints from the nearly forty percent of these same men who, unfortunately, will be back in some other prison increases



very dramatically as they become 'better educated' by being confined along with older, more experienced convicts. The Ombudsman's word of mouth advertising occurs chiefly behind bars, I am sorry to say."

Because statements concerning Finnish experience were inconsistent with observations made in other countries, objective verification was sought by ascertaining the identity of two hundred complainants plucked at random from the Ombudsman's list for the year 1962. Of these two hundred (some of whom filed several complaints in the course of the year), one hundred twenty-five were prisoners of one sort or another; sixty-four might be described as "ordinary citizens"; six were conscripts who objected to treatment by their military superiors; three were school teachers; one was a lawyer; and one was a member of Parliament. This sample strongly supports the opinion that the Ombudsman is much more "the prisoners' man" than "the people's man."

Yet, when that has been said, one still notes that thirty-seven and one half percent of the Ombudsman's cases came from persons not in detention. This is a substantial share of the whole. The present Ombudsman, more actively than most of his predecessors, has encouraged school teachers to expand their students' awareness of his existence. Perhaps in time his office will gain fuller recognition than it has thus far had.

Even now, complaints to the Ombudsman are becoming diversified. Civil servants have little need for his services in personnel matters such as dismissal or disciplinary action, because these are cognizable by specific tribunals to which access is easy. Their organizations have, however, recently turned to the Ombudsman to enforce higher public officials' duty to bargain collectively. They have also encouraged their members to complain about systematic evasions of personnel regulations by local authorities. Municipal officials have complained against what they regard as overbearing conduct by central offices. Despite the organized businessmen's view that the Ombudsman is of no direct use to them, individual businessmen do in fact complain, as has happened for example in connection with the award of bus franchises and the denial of certain licenses. Though practicing lawyers say the Ombudsman is useful only to poor people who cannot pay for professional advice, some lawyers do approach him in behalf of clients, perhaps especially in connection with complaints of wide application. Thus an attorney, acting for a client, was recently successful in complaining to the Ombudsman about policemen's having off-duty private employment regarded as objectionable because of potential conflicts of interests.

*Complaints to provincial courts.* One very good reason, indeed perhaps the main reason, why neither the Ombudsman nor the Chancellor is overwhelmed by citizens' complaints is that grievances are readily redressed elsewhere, notably in the "provincial courts." These tribunals, at least one of which sits in each province, are catch-all appellate bodies. They are not regarded in Finland as full fledged courts because they may be (but rarely are) presided over by the provincial governor, and because the three members in each of these tribunals may be assigned purely administrative duties when not fully occupied by judicial work. They function in fact, however, in the same spirit and manner as courts, although their judgments issue in the form of decisions of the provincial administrations in whose name they act. When a citizen's views clash with those of lesser officials (and, after all, most officials with whom citizens come in frequent contact are within the category of "lesser"), the provincial courts are in a position to resolve the clash dispassionately, for the members of those courts have only tenuous links with the administrators.<sup>38</sup> With few exceptions, provincial courts' judgments are further reviewable in the Supreme Administrative Court.<sup>39</sup>

The provincial courts do more than siphon off bona fide grievances of individual citizens. They serve also as a forum for the airing of local controversies that might lose their point if they were removed to distant Helsinki for examination by the Ombudsman or Chancellor. Complaints against local officials are within the jurisdiction of both those high dignitaries, but neither one receives many of this type. They are much more likely to find their way to the provincial courts. In one rapidly growing town, a few determined traditionalists have taken nearly thirty cases to the provincial court during each of the past several years, seeking thus to prevent or at least postpone an urbanization they deplore. In the larger city of Turku, an elected official cheerfully commented: "Every time our Council meets, you can be sure that somebody will complain to the provincial court the next day, with copies to the local newspapers. Usually this is just a partisan tactic, having little to do with either legality or efficiency. I sometimes wish we were in the position of the Helsinki municipal council, which does

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<sup>38</sup> The statistics of the three provincial courts that sit in Turku will serve to exemplify the absence of pro-official bias. In 1963 these three tribunals disposed of 5,287 cases. Of these, 369 were dismissed because of untimeliness or nonprosecution by the appellant. In the 4,918 decisions on the merits, the initial administrative decision was reversed or modified in 2,663 cases, the matter was remanded for further proceedings in 334 cases, and the challenged decision was affirmed in 1,921 cases. Reversals, modifications, and remands thus constituted more than 60% of the courts' decisions. This is said to be a typical year's record.

<sup>39</sup> See pp. 336-37 *supra*.

its work month after month without anybody's noticing it at all. But on the other hand ours is a relatively painless way of conducting political warfare."

*Complaints to local prosecutors.* Finally, citizens may and do complain directly to local prosecutors concerning asserted misbehavior by other officials. Prosecutors, unlike the Ombudsman and the Chancellor, cannot "give a reminder" to an official in the form of a reprimand or advice for the future. They can only prosecute wrongdoers. In an informal manner, nevertheless, they do sometimes chide a public servant for rudeness or lack of diligence without prosecuting him. In this way, without ever putting a name to it, they do in fact though not in theory give a reminder from time to time.

Complaints to prosecutors in the more populous provinces are said to average about five a week, while other and even pettier cases occasionally go to prosecutors in the cities and towns. These usually pertain to isolated acts of clear though not easily proved impropriety (such as use of excessive force by an arresting policeman) or to delay in handling papers. Altogether, the eleven provincial prosecutors probably deal with no more than 1500 complaints per year. Whatever the precise figure may be, the provincial prosecutors do unquestionably handle many cases that could have been referred to the Chancellor or the Ombudsman had the complainants so chosen. This fact is clearly reflected in judicial statistics showing the total number of prosecutions of judges and officials (other than military personnel) during the years 1960-1964, inclusive. The courts during these five years entertained an average of 222 prosecutions against public servants. Of these, only 132 at the very most were (on the average) commenced at the behest of the Ombudsman, the Chancellor, or the special prosecutors of the four courts of appeal, leaving a balance of ninety that may be attributed to other prosecutors' responses to the complaints made directly to them.<sup>40</sup>

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<sup>40</sup> The pertinent figures from which the above conclusions are drawn may be summarized as follows:

	1960	1961	1962	1963	1964
Total prosecutions commenced	183	191	221	273	243
Prosecutions of judges	61	89	90	148	118
Other prosecutions by Chancellor	27	24	18	16	20
Other prosecutions by Ombudsman	11	15	9	6	9

Some of the "other prosecutions" attributed to the Chancellor and the Ombudsman probably in fact include a few cases involving judges and may therefore already have been included under the heading "Prosecutions of judges."

In addition to the cases involving civilian officials, civilian courts entertained the following numbers of prosecutions directed against military personnel for what might be called official misconduct: 1960, 17; 1961, 15; 1962, 10; 1963, 14.

*The processing of complaints.* Neither the Ombudsman nor the Chancellor has a large staff. Two full time and six part time assistants are available to the Ombudsman.<sup>41</sup> The Chancellor is aided by a Deputy Chancellor, who can act in his place in matters the Chancellor chooses, and by six full time staff lawyers and one part time assistant. Seventy to eighty percent of the staff's time is devoted to complaint work, most of which is supervised by the Deputy Chancellor, while the Chancellor concentrates on Cabinet matters and his duties as Supreme Public Prosecutor. In contrast the Ombudsman personally reviews the final action on every complaint, whether that action be a letter rejecting the complaint or a decision to prosecute.<sup>42</sup>

Both offices tend to ask for files in a great many cases, in order to ascertain the facts when complaints cannot be dismissed out of hand. This process is time consuming. Although less cumbersome means of checking the accuracy of a complainant's statements could be devised, neither office has encouraged its staff members to proceed informally or to take any great personal initiative. Neither office has the time or the resources for interviewing witnesses or conducting anything resembling trial hearings when conflicting evidence exists; under Finnish law, in fact, taking testimony under oath is impossible except in formal proceeding in tribunals. Local police officers and, infrequently, magistrates are pressed into service as field investigators, to take statements from persons who may have relevant information. Even when the conduct of policemen is the very fact in issue, the Ombudsman can command the help of no investigators other than the defendant's fellow officers. While the Chancellor can request a local prosecutor to investigate in his behalf, the ties between prosecutors and police are even closer in Finland than in the United States, and sometimes the head of the police force and the prosecutor are one and the same.

Before "giving a reminder" or otherwise making a finding that might adversely reflect on the person complained against, both the Chancellor and the Ombudsman afford him a chance to explain or

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<sup>41</sup> Because the demand for lawyers exceeds the supply now available in Finland and because the salaries attached to some positions are unrealistically low, the holding of multiple jobs is not unusual. This sometimes has consequences of uncertain merit. One of the Ombudsman's assistants is also employed in the Ministry of the Interior, which administers police affairs. Complaints to the Ombudsman concerning police administration are likely to be referred to this staff member because of his specialized background, which the Ombudsman deems an asset. The director of the national police force praises the Ombudsman's sound understanding of police problems, based on good advice received from his part time assistant. The possibility of divided loyalties has apparently not suggested itself as yet to the Ombudsman, the police director, or the staff assistant.

<sup>42</sup> Parliament elects a Deputy Ombudsman, who serves only when the Ombudsman is on leave or is incapacitated. He thus adds no numerical strength to the Ombudsman's staff.

object—not a formal hearing but, rather, an opportunity to justify, excuse, or minimize.<sup>43</sup>

*Action on complaints.* Predictably, most complaints prove to be unfounded. Dissatisfaction with an official's action may be perfectly genuine and yet have no justification. During a four year period, 1960-1963, action favorable to the complainant's position was taken in only 8.6 percent of complaint cases disposed of by the Ombudsman. In 1964, when many old cases were concluded without positive action upon the complaints, the figure fell to five percent.

TABLE I. OMBUDSMAN'S ACTIONS ON COMPLAINTS

	1960	1961	1962	1963	1964
Total of cases decided	955	947	805	787	1513
No action found appropriate because	871	865	730	727	1437
i) matter pending in court	32	19	30	29	28
ii) situation changed	8	22	7	5	8
iii) matter outside Ombudsman's jurisdiction	42	36	38	88	112
iv) insufficiently persuasive evidence	168	174	136	98	232
v) no error apparent	573	574	496	476	1003
vi) miscellaneous reasons	48	40	23	31	54
Action taken in support of complaint	84	82	75	60	76
by					
i) prosecution	8	15	9	6	8
ii) disciplinary proceedings	3	0	0	0	0
iii) admonition to official	22	22	37	24	28
iv) suggestion or instruction for future guidance	21	15	14	10	14
v) official himself took suitable action after Ombudsman's inquiry	30	30	15	20	26

<sup>43</sup> Parliament has instructed the Ombudsman, before commencing a prosecution, to give to the affected person "the possibility, if he so wishes, to present his opinion in the matter in a given time." The comparable instructions to the Chancellor say that if investigation of a complaint shows that an official action is "against law or otherwise erroneous, the guilty person, if not already heard in the matter, shall have an opportunity to submit an explanation and thereafter he will be legally prosecuted if the error is not of such nature that the matter can be concluded by a reminder . . . ."

During the four year period, 1960-1963, only 5.7 percent of the citizens' complaint cases handled by the Chancellor were found to be meritorious.

TABLE II. CHANCELLOR'S ACTIONS ON CITIZENS' COMPLAINTS

	1960	1961	1962	1963
Total of cases decided	635	539	493	406
No action found appropriate because	591	512	467	385
i) matter pending in court	10	5	6	2
ii) obviously trivial	22	9	4	3
iii) within another official's competence	29	26	20	20
iv) no impropriety found	530	472	437	360
Action taken in support of complaint	44	27	26	21
by				
i) prosecution	6	7	7	4
ii) disciplinary proceedings or admonition to official	13	8	8	8
iii) suggestion or instruction for future guidance	14	8	9	9
iv) official himself took suitable action after Chancellor's inquiry	11	4	2	0

Negative action on a complaint, however, does not necessarily leave the complainant wholly dissatisfied, for the communications he receives from the Ombudsman or the Chancellor sometimes enable him to understand and perhaps accept a decision previously resisted. One senses, however, that the Finnish watchmen of legality do not take as great care as their Scandinavian counterparts to enlighten complainants.

The tables set forth above do not show the totality of the watchmen's work. Some of that work is not responsive to complaints, but is wholly self-initiated. The tables omit, too, those complaints initiated not by the public at large but by the Cabinet, one of the superior courts, or some other official. During the years 1960-1963, 80.5 percent of these complaints led to some form of action by the Chancellor, as against the 5.7 percent of citizens' complaints which produced positive results.

TABLE III. CHANCELLOR'S ACTIONS ON OFFICIALS' COMPLAINTS

	1960	1961	1962	1963
Total of cases decided	123	71	70	69
No action found appropriate	22	20	14	9
because				
i) evidence inconclusive	8	8	7	1
ii) no merit on face of complaint	10	8	3	5
iii) should be referred elsewhere	3	1	4	3
iv) settled otherwise	1	3	0	0
Action taken in support				
of complaint	101	51	56	60
by				
i) prosecution	6	2	2	2
ii) disciplinary proceedings or admonition to official	2	7	1	2
iii) suggestion or instruction for future guidance	93	42	53	56

While the number of cases leading to corrective actions against individual officials remains small, many administrators testify that the Ombudsman's and Chancellor's investigation of complaints has substantial preventive effect. One high ranking prison administrator, for example, believes that the behavior patterns of guards has been greatly affected by their knowledge that prisoners have ready access to the Ombudsman. Further, his own administration has often been influenced by the Ombudsman's suggestions that aim at eliminating future complaints. "We do not always think the Ombudsman is right, but if he feels strongly about the way things should be done, we go along with him as a practical matter. At the same time," he added, "the Ombudsman listens to us, too. Before he criticizes, he gives us a chance to discuss; and after discussion he has changed his mind occasionally, just as we have. As a matter of fact we senior officials are glad the Ombudsman exists. He takes a lot of cranks off our backs, because they write to him instead of continuing to badger us. And he helps us superintend a scattered staff. We can't keep our eyes on them continuously no matter how hard we might try. They know, though, that the Ombudsman may be watching when we are not, and they take him seriously."

Police officials in widely separated cities were in accord that the Ombudsman's and the Chancellor's occasional fault finding did have a continuing impact upon policemen's conduct. "We have not had a single prosecution or reminder during my eleven years here," said the

chief of police in an industrial city, "and I hope we can keep it that way. But we have had inquiries about matters that had been sent to the Chancellor or the Ombudsman, and so we are well aware that complaints can be made. Of course, too, we have all heard about the prosecution of K. [a police chief in another city] for unnecessarily keeping a sick man in jail. That is very much on our minds because we have not in the past had any good system for dealing with sick prisoners. After what happened to K. we can't continue to be easy going. We are working on that problem right this minute."

Another senior official, commenting on proceedings initiated by the Chancellor as well as the Ombudsman, remarked that even a "reminder" growing out of a prosecution remains on a policeman's record as a black mark until it has been expunged by five years of unblemished service. It impedes promotion and preferment. He was asked whether he agreed with the opinion of one of his superiors that policemen's conduct is not changed by the activities of the two official watchmen. "Don't let anyone tell you," he advised, "that police officers don't care about those fellows in Helsinki. We sometimes think they should spend more time on bigger men than we are, because we already have a lot of supervision over us and the bigshots don't. But we know they can and do concern themselves with us, and that makes us careful."<sup>44</sup>

In all likelihood, however, this kind of chain reaction to the handling of complaint cases does not occur with equal intensity throughout the civil administration. An effort was made in 1964 to confirm the supposition that the Ombudsman is especially useful in connection with social welfare matters. Not a shred of evidence was found to support that view. Officials familiar with both central and local administration of laws concerning children, alcoholics, home relief recipients, maternal welfare, and rehabilitation doubted that either the Chancellor or the Ombudsman has had much of an impact on these features of the "welfare state." They agreed that supervision by the Ministry of Social Affairs was energetic and respected and that many of their decisions could be and were reviewed by the provincial courts as well.<sup>45</sup> They agreed, too, that welfare administrators have actually been prosecuted in the past for errors in administration. They simply rejected the idea

<sup>44</sup> The speaker was no doubt correct in saying that awareness of the Ombudsman encourages policemen to be careful, but of course carelessness does still exist. The Ombudsman's report for 1963 reports a prosecution and fining of a police officer who had failed to withdraw a "Wanted By The Police" notice after the person to whom the notice referred was in fact no longer wanted; as a result the person referred to was later picked up and detained briefly by police in another city. Another policeman was fined and ordered to pay damages because he had struck a person he had arrested.

<sup>45</sup> See p. 344 *supra*.



that their work was likely to entangle them with the Ombudsman or the Chancellor; it was not that they were undisciplined in their official activities, but that their discipline and inspiration came from other quarters.

"Huoltaja," a monthly magazine published by the Ministry of Social Affairs, provides confirmation of a sort. This periodical, whose pages are devoted to welfare questions of all kinds, is sent to members of each "social board" in every community in the nation. The issues of "Huoltaja" from January 1958 through September 1964—eighty-one issues in all—were leafed through in order to find references to the Ombudsman. Only one such reference occurred throughout the entire period. The fact remains, nevertheless, that the Ombudsman does receive a substantial number of complaints pertaining to the work of welfare authorities, whether or not those authorities are sensitive to what affects them.<sup>46</sup>

## VII. ACTION ON OWN INITIATIVE

Neither the Chancellor nor the Ombudsman must wait for complaints. Both can and to some extent do take up matters on their own initiative.

The figures available in the Chancellor's office are unrevealing because they show chiefly the results of the routine checking of judges' and prosecutors' lists and reports, to which reference has been made in previous pages.<sup>47</sup> Conversations with the Chancellor's office suggest that other self-initiated cases are so rare as to be virtually nonexistent. As one staff member put it, "You can't rely on the newspapers for valuable leads. They are too inaccurate. If there is anything really back of a news story, we think that sooner or later someone will file a complaint. We are too overworked as it is without going out to look for more cases."

The Ombudsman is more ready to look into possible problems without first being asked. His annual reports show that he himself initiated an annual average of about twenty-five inquiries apart from

<sup>46</sup> The following figures are derived from the Ombudsman's annual reports for the years 1960-1964, inclusive.

	1960	1961	1962	1963	1964
Complaints arising from orders to be detained in a closed institution (which would include alcoholic treatment centers and work homes in which nonsupporting parents may be confined)	72	61	67	18	48
Complaints arising from other actions of welfare officials	42	30	27	11	70

<sup>47</sup> See pp. 347-49 *supra*.

inspections, which will be discussed in the following section. These have led in each year to one prosecution or disciplinary proceeding, an average of nine proposals to guide officials, and one corrective action by an administrative body then under investigation.

One can sympathize with the Ombudsman's and the Chancellor's reluctance to reach out for new business, since both offices have difficulty in keeping abreast of their current workload. The Ombudsman's backlog of unfinished cases rose from 159 in 1960 to 174 in 1961, to 226 in 1962, and to 544 in 1963; but a determined effort reduced the number of pending matters to 245 at the end of 1964. The Chancellor's backlog mounted from 150 in 1960, to 234 in 1961, and to 401 in 1962, then was reduced slightly to 359 at the end of 1963 and rose once more to 373 in 1964.

The watchmen's unwillingness to proceed unless someone has cried for help is, however, especially unfortunate in Finland. Parliament and its committees have no power under that country's Constitution to investigate administrative functioning. Citizens rarely call upon their parliamentary representatives for assistance in dealing with government. In fact, after seven centuries of existence under foreign domination, Finns tend not to be very outspoken about dissatisfactions; even in ordinary commercial affairs, let alone governmental ones, many Finns keep their grievances to themselves rather than articulate them forthrightly. "Many of us Finns," a professor asserted recently, "do not speak with open mouths." These circumstances should perhaps caution the official watchmen against too heavy reliance on complaints and too great detachment from the news and rumors of the day.

During a recent period the Helsinki newspapers gave great prominence to two stories that would almost certainly have led ombudsmen elsewhere to launch an inquiry. A large hospital construction contract had been awarded to the higher of two apparently equally reputable bidders, the press declared. The unsuccessful bidder, perhaps fearful of antagonizing officials from whom future contracts might be sought, seemed disinclined to contest the matter. Nobody complained to the Ombudsman or the Chancellor, and neither of them initiated an investigation. In the second case, a schoolgirl had written and published an article critical of her teachers. She was reprimanded and slightly penalized by her school. The press, perhaps sensing an issue of civil liberties, devoted considerable space to the teacher-pupil controversy. The schoolgirl made no complaint, however, and there the matter ended so far as the watchmen were concerned—though the Central Board of Education subsequently reviewed the case on its own motion and upheld the girl.

These two episodes suggest what appears to be a general condition. The watchmen are not invariably inert; at times, on the contrary, they have strongly intervened upon their own motion.<sup>48</sup> Still the unfolding scene does not strongly attract their attention. Consequently they have far less impact on society than does, say, the Swedish Ombudsman, whose repeated interventions over the years have helped mold public opinion concerning such diverse things as free speech, freedom of religion, police restrictions, and penology.<sup>49</sup> The Finnish watchmen, ordinarily concentrating on the routine of law administration and relying on the initiative of complainants whose grievances may be relatively insignificant, miss opportunities to provide social leadership in areas where it seems needed.

### VIII. INSPECTIONS

The Chancellor, who in earlier years personally inspected governmental offices throughout the nation, no longer has time to inspect even offices of the prosecutors who are immediately subordinate to him. The provincial prosecutors regularly visit, in his behalf, the prosecutors and police administrators of the smaller units of government, and their inspection is said to be thorough. The Chancellor's office as such, however, inspects only reports that are filed with it. Hence the Chancellor may, in this context, be characterized as an inspector of documents.

The Ombudsman, by contrast, engages in extensive personal inspections of prisons, police headquarters, courts, and various institutions in scattered locations. His reports show a five year average of seventy-two such inspections, ranging from a low of thirty in 1960 to a high of ninety-six in 1962 and 1964.<sup>50</sup> The present Ombudsman has been a markedly more energetic traveler than his immediate predecessor.

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<sup>48</sup> Upon the basis of press reports in 1963, for example, the Ombudsman inquired into the assertedly inefficient functioning of a national educational examining body, whose activities importantly affected many young persons. The administration of the examinations and the publication of their results are said to have given far greater satisfaction in 1964. An earlier Ombudsman had acted upon his own initiative to denounce a work stoppage by civil servants—an action still hotly resented in some circles. A former Chancellor asserts that he "looked into" all newspaper reports of "scandal or wrongdoing," though this fact is not reflected in his annual reports. He does point to the termination of a road race on highways near Helsinki after he had called attention to its dangers. Another former Chancellor recalls the promulgation of certain air transport regulations after he had raised questions about gaps in the existing body of controls, a matter into which he had inquired because of a newspaper article.

<sup>49</sup> See Bexelius, *The Swedish Institution of the Justitieombudsman*, 27 INT'L REV. OF ADMINISTRATIVE SCIENCE 243 (1961). Compare Gellhorn, *supra* note 3.

<sup>50</sup> These figures are slightly larger than those found elsewhere in the same reports from which Table IV has been compiled. The discrepancy can be explained in this

TABLE IV.    INSPECTIONS BY OMBUDSMAN

<i>Nature of Institution Inspected</i>	1960	1961	1962	1963	1964
Prisons and work camps	15	7	8	12	11
Equipment for transporting prisoners	0	0	3	3	0
Jails—city and town; police lockups	0	11	12	0	9
Police stations—towns	3	6	11	7	0
Offices of Länsman (police chief, prosecutor, general law administrator in less populous districts)	1	5	17	20	17
Police-highway patrol stations	3	0	5	5	13
Welfare institutions	2	3	5	2	12
Welfare offices	0	2	0	0	0
Military installations	2	3	13	25	9
Border authorities	0	0	1	2	6
Provincial governments	1	1	6	2	4
Country judges	1	1	10	11	11
Offices of national administrative organs	2	4	3	3	3
Municipal offices	0	0	2	1	1
	—	—	—	—	—
Totals	30	43	96	93	96

These figures lose some of their luster, however, when one discovers that only twenty-four days including travel time were devoted to the ninety-six inspections completed in 1962; the ninety-three inspections of 1963 required only thirty-four days, again including travel time; and twenty-seven days sufficed for the ninety-six inspections in 1964. Questions inescapably arise concerning the thoroughness and utility of such hurried and random on-site studies of public administration. When interrogated, officials who have been inspected in recent years were unable to recall any benefits to them in terms of fresh attitudes toward their work. The Ombudsman believes, nevertheless, that his visits do have beneficial effects. He misses no opportunity to stress the dangers of slowness in handling public business. In his opinion this conversational emphasis has a real, though not precisely measurable

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way: in one branch of his report the Ombudsman has counted as one inspection his visiting several establishments under a single control, such as a visit to a police jail in conjunction with a visit to the superior official responsible for the jail's administration; elsewhere, these have been listed as two separate inspections.

influence, on the future behavior of the judges and other officials he meets during his travels.

The Ombudsman has been specifically instructed by Parliament to conduct "inspection tours in order to make himself acquainted with matters pertaining to his official functions; he shall especially visit prisons and ask for information about the care of prisoners as well as other matters concerning them."<sup>51</sup> This narrow focus is historically explicable by the fact that many political prisoners were in detention when the parliamentary instructions were formulated in 1920 and concern about their treatment was widely felt. Continuing that same focus today is less explicable. Finland has a modern and humane prison administration.<sup>52</sup> Technical inspectors frequently examine penal institutions of every type. The Ombudsman now seems to serve chiefly a psychological purpose; prisoners like to talk with him about their sentences and their family problems, and perhaps they occasionally have something interesting to tell him about prison disciplinary practices or administrative problems other than the perennial favorite in every institution, namely, food. No Ombudsman has asked for a change in Parliament's instructions, although a nontraditionalist may conclude some day that prison abuses can be controlled without forcing the Ombudsman personally to spend so much time behind bars instead of behind his desk.

The present Ombudsman's apparent intention of paying more visits to military installations than did his predecessors is highly commendable. Finland, unlike Sweden and Norway, has no separate ombudsman to deal with problems of military personnel. Thus the legal protection of soldiers as well as civilians is in the Ombudsman's hands. Soldiers are entitled to write or speak to the Ombudsman without going through military channels,<sup>53</sup> but they rarely do so, possibly because they may fear covert reprisals or perhaps simply because they are unaware of their privilege.<sup>54</sup> The Finnish army, somewhat Prussian in its tradition, long resisted civilian intrusion. The Ombudsman is attempting to effect a change in attitude and to make his availability to military personnel a reality instead of the myth it has largely been until now. In 1963 he approached the General Staff, requesting that information about the Ombudsman be included in the orientation program for

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<sup>51</sup> SERVICE REGULATIONS OF THE PARLIAMENTARY OMBUDSMAN, art. 10 (Jan. 10, 1920).

<sup>52</sup> See, e.g., Soine, *Finland's Open Institutions*, 28 Fed. Probation, Dec. 1964, p. 19.

<sup>53</sup> See Kastari, *The Parliamentary Ombudsman*, 28 INT'L REV. OF ADMINISTRATIVE SCIENCE 391, 395 (1962).

<sup>54</sup> Action by military authorities was involved in only five complaint cases throughout 1963. See Kastari, *The Chancellor of Justice and the Ombudsman*, in *THE OMBUDSMAN: CITIZEN'S DEFENDER* 65-66 (Rowat ed. 1965).

recruits. His recent inspection trips to military bases have enabled him to "show the flag" if nothing more.

### IX. PRESENTING GENERAL PROPOSALS

Both official watchmen have been instructed to note the need for new laws and not to content themselves with enforcing those already enacted.<sup>55</sup> Both men have accordingly felt free to present general proposals to the Cabinet, to individual ministers, and to the Parliament. They have, in fact, acted somewhat as law reform commissions, calling attention to desirable changes in fields that would not otherwise be likely to attract much public notice. Thus, for example, the Chancellor in late 1964 sent the Minister of Justice a number of suggested statutory clarifications bearing on criminal trials and sentencing procedures. The frequency with which he had detected judicial errors in these areas suggested that some of the fault might lie with poorly formulated laws rather than with the men who had erroneously applied them.

In general, no more is done than to raise a question. The formulation of suitable legislation is left to others. Thus, in 1962, the Ombudsman called the Ministry of Justice's attention to a complaint received repeatedly from persons serving sentences in prison: they thought they had not received proper credit for time spent in detention after trial but before being transported to the penitentiary. The matter had been handled by the Supreme Court as long ago as 1956, but the decision was adverse to the prisoners' view. The flow of complaints continued. The Ombudsman, after six years of responding to written and oral grievances, finally wrote mildly: "Since the present condition of affairs seems to me unsound, I feel it proper to bring the problem to the Ministry's attention so that it can consider whether legislative or other remedial steps should be taken."

In the same annual report the Ombudsman disclosed that the social welfare administration had altered its explanation of a formula for computing old age pensions. The change was made after the Ombudsman had told the administration that the explanatory wording previously in use had raised false hope among pensioners and had consequently spawned unnecessary complaints with which the Ombudsman had had to deal.

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<sup>55</sup> The instructions to the Ombudsman tell him (§ 8) to "point out imperfections in Acts of Parliament and decrees as well as unclear or conflicting provisions, especially those that have caused various interpretations, hesitation, or other trouble in jurisdiction or administration, and to make proposals for their elimination." The instructions to the Chancellor say (§ 14) that if he has "noticed that the administration of law in some respect has caused criticism or that new legislation in some field is necessary," he should express his opinion about such matters in his annual report or otherwise.

The Ombudsman and the Chancellor advance general proposals rather diffidently.<sup>58</sup> They seem especially reluctant to frame fully elaborated ideas for legislative study. In this they differ somewhat from their colleagues elsewhere in Scandinavia, especially in Denmark, where the Ombudsman sometimes presents his suggestions in such detail that they may be readily incorporated in statutes or regulations. The more modest Finnish approach has the virtue of leaving full responsibility in the hands of those who are directly charged with formulating legislative proposals. On the other hand, a suggestion that a problem deserves to be considered is far less forceful than a suggestion of a particularized solution.

Moreover, the watchmen's annual reports to Parliament, embodying their ideas for the future as well as their account of past activities, do not arouse much excited attention. They are referred to the Constitutional Committee, whose secretary masters their contents but whose members are not thought to be extremely diligent readers. The Ombudsman and the Chancellor are sometimes invited to confer with the Committee informally. The Chancellor's reports are usually simply received and approved without comment.

The Ombudsman includes in his report a list (sometimes very lengthy) of parliamentary resolutions the Cabinet has not carried out as expected. This has enabled the Constitutional Committee to inquire into the reasons why a particular suggestion has attracted no response, or even to commence an open battle with a lethargic minister or the Cabinet as a whole. This, however, has little to do with the Ombudsman's own ideas. Political realities have kept most of them outside the legislative arena. They have either been accepted as "non-controversial" or have quietly gathered dust. The present Ombudsman, a former secretary of the Constitutional Committee who remains in contact with members of Parliament, may prove to be a more vigorous and more adroit lobbyist than his predecessors.

#### X. THE EDUCATIONAL FORCE OF THE WATCHMEN'S WORK

In law administration as in medicine an ounce of prevention is worth a pound of cure. When an official error occurs, it should of course be corrected. If correction of one forestalls another, the value of the correction is many times multiplied.

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<sup>58</sup> Examples: In 1961 the Chancellor wrote the Ministry of Justice that the use of tape recorders to record courtroom proceedings created some dangers of diminishing the completeness or accuracy of trial minutes. No affirmative suggestions were made and no follow-up seems to have occurred. In 1962 the Ombudsman very mildly suggested to the Ministry of Social Affairs that it might be a good idea, before ordering a person to be confined in a closed workhouse because he had not supported his family, to give him an opportunity to "say what he thinks about the proposed order and to include a short remark about this in the minutes of the directorate."

Both the Chancellor and the Ombudsman can claim significant accomplishments as educators. For example, the Ombudsman advised the Ministry of Justice concerning the rights of a specific complainant who had been returned to prison because of misconduct while on probation; apparently at his suggestion, this advice was then generalized in the form of instructions circulated to all prison administrators. Similarly, when the Chancellor has bluntly told a Minister that his staff should note the result of a particular case handled by the Chancellor's office, the invariable consequence has been a ministerial communication for subordinate officials' future guidance. Ombudsman's rulings that may have general significance are published in police magazines, one for higher ranking officers and one for the police force in general, giving the rulings an impact far beyond the isolated cases that occasioned complaints. In 1963 the Ombudsman concluded that the Ministry of Finance had disregarded pertinent statutory directions concerning collective bargaining with civil service organizations. Mindful that bargaining sessions were about to commence in various units of the Ministry of Social Affairs, he requested the head of that ministry to issue a bulletin incorporating for his subordinates' information the Ombudsman's admonition to the Finance Minister. The Minister's quick compliance with this suggestion warded off what might have been a widening controversy.

Without minimizing the educational value of moves like these, one must nevertheless note that the watchmen's work is usually more redressive than instructive. Awareness of the Chancellor's and the Ombudsman's actions is inadequately disseminated. Their judgments are, more often than not, little known islets in the vast sea of public administration.

Both officers view their annual reports to Parliament as their chief channel of communication to officialdom and to the world at large. Their expectation that these reports will be read and pondered is not wholly mistaken. A random sampling of administrators in different parts of Finland showed in 1964 that some do indeed say they read the reports carefully—a child welfare officer here, a provincial prosecutor there, a rural district administrator somewhere else, a judge of a provincial court in yet another place. But the readers are more than offset by the nonreaders. A number of judges remarked evasively that they “thumbed through the reports occasionally”; a senior provincial administrator declared that “we get a couple of copies each year, and of course anybody who wants to read them is welcome to do so”; a major ministry believes that few of its officials in the field receive or read the reports, “though we do have several here in the



ministry someplace and we probably have a copy in the library that could be consulted if someone were individually interested." In short, close study of the Ombudsman's and Chancellor's judgments has not become a conventional part of official life, but is, rather, a matter of individual initiative.

To some extent this reflects sheer unavailability of the documents in question. Until recently the Ombudsman's annual report appeared in an edition of only about seven hundred copies. In 1963, however, 2,047 copies were printed in Finnish and 725 in Swedish.<sup>57</sup> About 1,700 copies were sent to various public offices and institutions, the remainder being sold to or otherwise distributed among libraries, scholars, newspapers, and interested persons in Finland and abroad. So restricted a circulation means that general awareness of the reports' contents can be achieved only through supplemental publicity.<sup>58</sup> Some ministries, seemingly more alert than others to find interesting lessons in the reports, occasionally issue bulletins and staff communications that distill general directives from the Ombudsman's or the Chancellor's reactions to particular occurrences. Chiefly, however, the reports are received in silence.

The silence extends to the public press. Finnish newspapers pay little attention to the general work of either the Ombudsman or the Chancellor. Of course when major officials are enveloped by political scandals, as in the rare instances when the watchmen have proceeded against Cabinet ministers, newsmen's excitement becomes intense. A few general problems—motion picture censorship and governmental labor relations, for example—have been mentioned by the press. For the rest, as a former Ombudsman remarked, "the day by day activities pass unnoticed. They don't have enough sex and crime ingredients to interest the papers."

The newspapers' inattention to the Chancellor and the Ombudsman handicaps the work of these officials. In other countries the ombudsmen have been able to arouse a certain amount of journalistic fervor about the importance of what they are doing. As a consequence, their prosecutions, reprimands, and recommendations are widely reported in the daily press and thus come to the notice of many officials

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<sup>57</sup> The Constitution of Finland provides in article 14 that "Finnish and Swedish shall be the national languages of the Republic. The right of Finnish citizens to use their mother tongue, whether Finnish or Swedish, before the courts and the administrative authorities, and to obtain from them documents in these languages, shall be guaranteed by law. . . ." About 7.4% of the population of Finland according to the 1960 census is Swedish speaking. Of the 189 professorships at the University of Helsinki twenty-three are designated as "Swedish," and students may use their mother tongue in work with all professors.

<sup>58</sup> Of course the determination of an individual matter is made known by letter to the immediately affected official or organ long before the annual report appears.

who would not receive or read an annual report. More than that, the journalists' response to what the ombudsmen do creates, in turn, a larger public response to their efforts.

The press appears not to be unfriendly to the Chancellor and the Ombudsman, nor are they unfriendly to the press. They are simply aloof. As shown in an earlier section of this discussion, newspaper reports cause little stir in the watchmen's offices, nor do those offices make much effort to arouse the newspapers' interest. Possibly the fruits of their work would become more impressive if journalists could be made aware of its significance and could be aided in following it closely.<sup>59</sup>

## XI. CONCLUDING OBSERVATIONS

Veli Merikoski, one of Finland's best known legal scholars, has effectively discussed his country's mutually complementary efforts to guarantee legality of administrative action and, simultaneously, to nurture governmental effectiveness. "The provisions which ensure that decisions shall be just," he has written, "cannot be made so stringent that the decisions will be considerably delayed. This means that the demand for guarantees of legality cannot be allowed, in administration, to push aside altogether the demand for prompt and elastic action—that is to say, for efficiency. . . . The trend towards efficiency which is felt in administration makes it impossible to reach perfection in the field of preventive guarantees of legality. Even if such guarantees were to be made as strong as possible, the imperfections inherent in all human institutions would not allow a total suppression of faulty decisions."<sup>60</sup>

Finland has highly developed its means of correcting those faulty decisions that have not been totally suppressed. Few official determinations that affect private persons are unchallengeable. The Supreme Administrative Court has broad powers of review and its members possess both the independence and the professional capability to exercise those powers meaningfully. Moreover, the ordinary courts of law have capacity to deal with administrative improprieties—not only with the graver kinds that would be regarded as malfeasance in any country, but also with lesser faults that would be regarded else-

<sup>59</sup> In Sweden reporters regularly examine the in-flow of cases to the Ombudsman, as well as his final determinations. See Gellhorn, *supra* note 3. The Finnish Official Documents Act of 1951 broadened the opportunity to utilize materials in the Ombudsman's or Chancellor's possession. In a recent instance the Ombudsman has himself protected and enforced the newspapers' right to know and to inform their readers; he directed the Helsinki municipal government to reveal the names of applicants for appointment to a staff vacancy.

<sup>60</sup> Merikoski, *Legality in Administrative Law: Some Trends in Evolution and Practical Experiences*, 4 SCANDINAVIAN STUDIES IN LAW 127, 128, 129 (1960).

where as noncriminal ineptitude or slothfulness.<sup>61</sup> To assure that such matters can be brought within judicial reach an unusual provision of the Finnish Constitution authorizes private parties, quite independently of the prosecutor's office, to commence a criminal action against a public official.<sup>62</sup> Judges as well as other law administrators are personally liable to those injured by their mistakes, but the injured person often has the option of suing the state, which is financially able to pay whatever damages may be awarded and which must then reimburse itself as best it can from the actual wrongdoer.<sup>63</sup>

With so many legal safeguards available today, the question arises whether the Chancellor and the Ombudsman are still needed—as undoubtedly they once were—to be the public's watchmen against official mistakes. Nobody in Finland appears to have doubts on that score. Public servants and private persons alike speak cordially about their two official complaint bureaus. Their mere existence is generally regarded as a valuable shield against oppression—in much the same way as a nation's military force is usually thought to be a shield against aggression.

"Little Man" and "Big Government" are among the most widely accepted clichés of our times. Brawny allies like the Chancellor and the Ombudsman may fortify Little Man's supposedly constant and necessary efforts to avoid being crushed by Big Government. That seems to be the conception now underlying these two offices.

A considerable discrepancy may be noted between conception and reality. Neither the Ombudsman nor the Chancellor has sprung quickly to the defense of basic rights in time of trouble since Finland achieved independence. Both of them have become righteously wrathful about a person's being fined a penny more than the permitted maximum, or being detained in jail an extra day because the jailer has misread the calendar. Nobody, however, recalls their taking an unpopular stand in defense of larger civil liberties when these have been under heavy pressure, as unfortunately they have been more than once.

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<sup>61</sup> See PENAL CODE § 40.21, quoted p. 337 *supra*.

<sup>62</sup> FINLAND CONST. art. 93(2); see Merikoski, *supra* note 60, at 133.

<sup>63</sup> This "protection" is not an unmixed blessing, according to some Finnish lawyers. Officials who fear the possibility of having to pay damages sometimes fail to exercise their judgment vigorously, it is said; the public interest may suffer from over caution as much as from over aggressiveness and often may suffer even more. Furthermore, disbursing officials are said to be unduly rigid in passing on claims against public funds; if a claimant is underpaid, he can sue to recover the full amount of his claim, but if the claim has been honored and the auditor of accounts later concludes that an overpayment has occurred, the disbursing official must reimburse the public treasury. Lawyers think this leads disbursing officials, anxious to avoid all risk of personal liability, to reject claims they really regard as probably valid, with the result that litigation is often necessary to settle accounts that should have been uncontested.

Even in smaller issues with a civil liberties cast, the Ombudsman shows no marked eagerness to range himself on the citizen's side. For example, the Ombudsman's help was sought in 1964 by a conscript whose superior officers had forbidden his publishing an article favoring general nuclear disarmament and pacifism. On the basis of rather vaguely identified "principles," the Ombudsman deemed this restriction upon the citizen-soldier to be permissible. The Constitution says that "Finnish citizens shall enjoy freedom of speech and the right to print and publish . . . without interference,"<sup>64</sup> except that this provision does not prevent "the establishment by law of restrictions which are necessary . . . as far as persons on military service are concerned."<sup>65</sup> No such restrictions had been established by statutory law, if that is what the Constitution means "by law." Obviously an inexperienced foreigner cannot pretend to debate finer points of constitutional law with a distinguished Finnish jurist. All that can be said here is that the Ombudsman's analysis revealed no libertarian inclinations.

Another 1964 example may be of interest. A motion picture importer complained that the Film Inspection Office—the film censorship board—had been biased and had disregarded laws applicable to its work. After extensive correspondence the Ombudsman concluded that the Office had indeed been prejudiced and, moreover, had entrusted some of its censorial activities, quite improperly, to a clerk or bookkeeper. He then admonished the Office to behave itself better in the future and also sent a copy of his decision to the Cabinet, to whom he vaguely suggested the desirability of taking steps to guide the Office and ensure the legality of its later proceedings. His reactions seem mild when compared with his and the Chancellor's stern insistence upon precision in other areas of general significance.

In 1962 a number of complainants reported that they had been confined in a workhouse and had been forced to labor for their families' support, without having been accorded an opportunity to be heard. The records of the workhouse falsely showed, they asserted, that a hearing had been held. Investigation proved their charges to be well founded; the records were untrue. But the Ombudsman remarked, without any great display of indignation, that the workhouse had no statutory duty to give a hearing anyway, so its inaccuracy could be overlooked.<sup>66</sup> He did suggest, in restrained terms, that hearings might be desirable

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<sup>64</sup> FINLAND CONST. art. 10.

<sup>65</sup> FINLAND CONST. art. 16.

<sup>66</sup> This tolerance of inaccurate records may be contrasted with the prosecution of City Judge Pursiainen in the preceding year. The minutes of a trial for violation of liquor laws had been defectively compiled by Judge Pursiainen though apparently without prejudice to the convicted defendant, who did not appeal. The judge was convicted of imprudence in office and was reprimanded.

in the future. Had the Ombudsman thought of himself as the citizen's champion against naked governmental might, he would assuredly have driven this point home with all the force he could command.

In the same year a resident of a rural community complained to the Ombudsman that municipal officials had "warned" him that he must improve his manners in dealings with his neighbors. The complainant, who apparently shared Mr. Justice Brandeis' feeling that "the right to be let alone" is the right "most valued by civilized man,"<sup>67</sup> argued to the Ombudsman that public officials had no competence to intrude into his personal affairs. The Ombudsman, having inquired into the matter, agreed that the local authorities had acted beyond the limits of their power. But he dropped the issue there, without either a stern admonition or an eloquent essay that might perhaps have reinforced the sorely beleaguered right of privacy.

None of this suggests that the Ombudsman is supernumerary or that the Chancellor is unimportant. The Chancellor would be important if he never received or acted on an individual complaint; his service as legal adviser to the Cabinet would alone justify his existence. With little to distract him, the Ombudsman can concentrate on citizens' complaints and in doing so he doubtlessly performs a valuable social function.

In the end, nonetheless, one comes away with the feeling that in dealing with the problems of Little Man and Big Government, both offices have lacked verve. Their potentialities have been only partly realized. "Legality" has been given so technical a signification that the public at large has no warm feeling for what they do. Technicality is not in itself to be derided. Formalities create normalities in law administration. "The history of liberty," as Mr. Justice Frankfurter well said, "has largely been the history of the observance of procedural safeguards";<sup>68</sup> and this is true even as to those safeguards that appear to the layman to be "mere technicalities." At some point, however, formal correctness becomes formalism and technicality becomes pettifoggery. That point seems very close to being reached in Finland today.

The public at large is unlikely to burst into cheers when the Chancellor reports, for example, the recent prosecution and reprimanding of youthful Judge Edward Andersson. Andersson had penalized one Paavo Lehti for disregarding a summons to appear in the court of Espoo. Unfortunately the summons was written on a printed form that bore the address of the old courthouse from which

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<sup>67</sup> *Olmstead v. United States*, 277 U.S. 438, 478 (1928).

<sup>68</sup> *McNabb v. United States*, 318 U.S. 332, 347 (1943).

Andersson's court had recently moved. The location of the new courthouse had, however, been printed in the newspapers, it was posted on the door of the abandoned courthouse, and it was not a closely guarded secret in Espoo. Lehti had not explained his absence by saying that he could not find the court to which he had been summoned. Yet Andersson was prosecuted. When the court of appeal refused to convict him, an appeal was taken to the Supreme Court, which finally agreed that the young judge had committed the crime of "imprudence" when he had punished Lehti for ignoring the summons.

A succession of cases like that one might justify the thought that Finland's watchmen were watching for the wrong things, or at any rate were using too powerful magnifying glasses in their search for flyspecks.

Major lapses from governmental rectitude are, fortunately, not matters of constant occurrence in well ordered countries like Finland. The Ombudsman and the Chancellor cannot be criticized, therefore, for failing to achieve daily sensations by exposing arrogant administrators, bungling bureaucrats, grasping governors, and oppressive officials. If other countries were, however, to seek lessons in Finland's experience, they might conclude that the citizenry's guardians need bold initiative and keen awareness of the implications of individual episodes even more than they need a passion for detail.